Filed 5/12/10 Equus Sanctuary v. County of L.A. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

EQUUS SANCTUARY et al., Plaintiffs and Appellants, v. COUNTY OF LOS ANGELES et al., Defendants and Respondents.	B216249 (Los Angeles County Super. Ct. No. BC405026)

APPEAL from an order of the Superior Court of Los Angeles County, David L. Minning, Judge. Affirmed.

Law Offices of John J. Uribe and John J. Uribe for Plaintiffs and Appellants.

Office of the County Counsel, Robert E. Kalunian, Acting County Counsel, Richard K. Mason, Assistant County Counsel, and Diane C. Reagan, Principal Deputy County Counsel, for Defendants and Respondents.

INTRODUCTION

Plaintiffs Equus Sanctuary (Equus) and Linda Moss (Moss, or collectively plaintiffs) appeal from an order sustaining the demurrer of defendants, County of Los Angeles and Los Angeles Department of Animal Care and Control (collectively County), and dismissing the action. We affirm.

FACTS[1]

A. *Complaint*

Equus is a nonprofit public benefit corporation whose mission is to rescue horses from slaughter and to care for them. It accepts public donations to carry out its mission. The majority of the horses it has rescued were old, sick, injured or disabled. Until recently, it was caring for over 100 horses.

On June 16, 2008, Equus and Moss owned 109 rescued horses, which they kept on Equus' premises. On that date, County agents entered Equus' premises and seized and removed all of the horses without the consent of Equus or Moss.

The County refused to return the horses or to agree not to euthanize them. They also refused to let Equus and Moss know the whereabouts or disposition of the horses.

---

[1] On appeal from a judgment of dismissal after a demurrer is sustained without leave to amend, the facts we consider are the complaint's properly pleaded or implied factual allegations, as well as facts which have been or may be judicially noticed. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081; *Sacramento Brewing Co. v. Desmond, Miller & Desmond* (1999) 75 Cal.App.4th 1082, 1085, fn. 3.)

B. ***Judicial Notice in the Trial Court***

1. Transcript of Tape Recorded Postseizure Hearing in the Matter of Linda Moss, Renee Duncan and Equus Horse Sanctuary

The hearing was conducted on July 7, 2008 by hearing officer Corporal Al Torres from SEAACA Animal Control in Downey. It was conducted under Penal Code section 597.1 for the purpose of determining the validity of the seizure of Equus' animals. Equus and Moss were represented at the hearing by their attorney, John Uribe.

2. Postseizure Hearing Report

On July 10, 2008, Corporal Torres signed a postseizure hearing report. It contained his findings as follows: "Based on the testimony and evidence presented at the post seizure hearing on 7/07/08, I find that the [County] acted within the guidelines of P[enal]C[ode section] 597.1. The [County] did demonstrate that the horses seized from 12754 Murphy Ln, Pearblossom, California were neglected and not provided required veterinary care. Verbal testimony and photos were presented as evidence establishing the basis for my findings. [¶] I find for the [County] in that the seizure of the horses located at 12754 Murphy Ln, Pearblossom, California, was necessary to protect the health or safety of the animals."

3. Felony Criminal Complaint

On June 18, 2008, the District Attorney filed a felony complaint against Janis Ridgeway Damiani (Damiani) alleging 15 counts of cruelty to an animal—a horse—in violation of Penal Code section 597, subdivision (b).[2] The complaint also alleged one count of cruelty to a dog and 14 counts of cruelty to a cat in violation of Penal Code section 597, subdivision (b).

---

[2] Damiani was the caretaker of the animals at Equus Horse Sanctuary.

4. Certified Copy of Conviction Record

On June 30, 2008, Damiani pled no contest to two counts of animal cruelty. The remaining 28 counts were dismissed pursuant to a plea agreement.

C. *Judicial Notice in the Court of Appeal*

On September 4, 2008, the County sent Moss a bill for the cost of seizure, impoundment, care and boarding fees for the seized horses. Attached to the bill was a copy of the postseizure hearing report. On December 18, 2008, the County sent Mr. Uribe a response to his request for public records relating to the matter. Enclosed with the letter was a transcript of the hearing.

PROCEDURAL BACKGROUND

On January 6, 2009, plaintiffs filed a verified complaint for conversion, trespass to chattels, claim and delivery (replevin), accounting, and declaratory relief.

On February 20, 2009, the County filed a demurrer and a request for judicial notice. The bases of the demurrer were: (1) "a neutral hearing officer confirmed that the horses were properly seized; therefore, there was no wrongful taking as a matter of law"; (2) "[t]he time to challenge the administrative finding that the horses were properly seized has expired"; (3) since the horses' caretaker "was convicted of felony animal neglect, there was no wrongful taking as a matter of law"; and (4) "the County is immune from liability as a matter of law."

The County requested judicial notice of the official transcript of the postseizure hearing, the postseizure hearing report, the felony criminal complaint against Damiani, and the certified copy of Damiani's conviction record. Plaintiffs made various objections to judicial notice of these items.

The trial court granted the request for judicial notice and sustained the demurrer without leave to amend. It explained that the allegation that the horses were wrongfully seized was "directly contradicted by the judicially noticed fact of the conviction of the

caretaker of the horses on animal cruelty charges." The County was required to seize the horses under Penal Code section 597.1 in order to protect them.

The trial court also found that the allegation the horses were wrongfully seized was also "contradicted by the judicially noticed facts that a post-seizure hearing, according [to] the Plaintiffs due process of law, was held where the Plaintiffs were represented by counsel. The Plaintiffs did not seek judicial review of the finding of the neutral hearing officer."

Additionally, the court found that the decision to seize the horses was a discretionary one. Therefore, the County was immune from liability for that decision under Government Code sections 815.2 and 820.2.

DISCUSSION

On appeal, plaintiffs challenge the trial court's taking of judicial notice of the four documents. They also claim that Los Angeles County Animal Control Officers do not have immunity for discretionary acts under Government Code section 820.2. Further, they contend their action is not barred by their failure to exhaust their administrative remedies, and the decision of the hearing officer has no preclusive effect, in that the decision from the postseizure hearing was not final.

A demurrer should not be sustained without leave to amend if the complaint, liberally construed, can state a cause of action under any theory or if there is a reasonable possibility the defect can be cured by amendment. (*Schifando v. City of Los Angeles*, *supra*, 31 Cal.4th at p. 1081.) Plaintiff bears the burden of proving the trial court erred in sustaining the demurrer or abused its discretion in denying leave to amend. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 459; *Coutin v. Lucas* (1990) 220 Cal.App.3d 1016, 1020.)

On appeal from a judgment of dismissal after a demurrer is sustained without leave to amend, we assume the truth of the complaint's properly pleaded or implied factual allegations. (*Schifando v. City of Los Angeles, supra*, 31 Cal.4th at p. 1081.) We

also consider matters which have been or may be judicially noticed. (*Ibid.*; *Sacramento Brewing Co. v. Desmond, Miller & Desmond, supra,* 75 Cal.App.4th at p. 1085, fn. 3.) We review the trial court's ruling de novo, exercising our independent judgment as to whether a cause of action has been stated as a matter of law and applying the abuse of discretion standard in reviewing the trial court's denial of leave to amend. (*Montclair Parkowners Assn. v. City of Montclair* (1999) 76 Cal.App.4th 784, 790; *Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497-1498.)

A. *Judicial Notice*

Under Evidence Code section 452, subdivision (c), a court may take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." Under subdivision (d), the court may take judicial notice of "[r]ecords of . . . any court of this state . . . ."

Plaintiffs first contend that the trial court erred in taking judicial notice of the transcript and postseizure hearing report, in that (1) SEAACA, for whom the hearing officer worked, is a private entity, so the hearing was not an "official" act; (2) the transcript and report were not records of a "court"; and (3) there was a dispute as to the accuracy of the transcript.

Penal Code section 597.1, subdivision (f), provides that the officer seizing animals under that section shall give the owner "the opportunity for a postseizure hearing to determine the validity of the seizure." "The seizing agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the seizure . . . of the animal and is not junior in rank to that person. The agency may utilize the services of a hearing officer from outside the agency for the purposes of complying with this section." (*Id.*, subd. (f)(2).)

This section makes it clear that the postseizure hearing is an act of the seizing agency, not of the hearing officer or the agency by whom the hearing officer is employed. For this reason, Corporal Torres stated, "I find *for the Department* in that the seizure of

the horses . . . was necessary to protect the health or safety of the animals." (Italics added.)

Evidence Code section 452, subdivision (c), permits the court to take judicial notice of the records of a local administrative agency. (1 Witkin, Cal. Evidence (4th ed. 2000) Judicial Notice, § 19, p. 114; see, e.g., *Town of Tiburon v. Bonander* (2009) 180 Cal.App.4th 1057, 1075.) This includes written decisions or reports by the agency. (*SC Manufactured Homes, Inc. v. Liebert* (2008) 162 Cal.App.4th 68, 82-83, fn. 8; *Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 518.) Thus, the trial court properly took judicial notice of the postseizure hearing report.

We need not decide whether the trial court properly took judicial notice of the transcript of the hearing, in that the transcript is not necessary to the resolution of this appeal. As we discuss more fully below, the decision of the hearing officer is final, and it supports the trial court's decision.

With regard to the felony complaint and certified copy of Damiani's conviction record, as plaintiffs observe, these documents have relevance only with reference to other facts not properly before us, i.e., facts which link Damiani to plaintiffs. Even if properly subject to judicial notice (Evid. Code, § 452, subd. (c); see *Pease v. Pease* (1988) 201 Cal.App.3d 29, 32), they do not prove any matter of relevance to the trial court's ruling on the demurrer. As with the transcript, however, these documents are not necessary to our resolution of the appeal.

B. *Finality of Administrative Decision*

Plaintiffs do not contend that the finding of the hearing officer that the horses were properly seized does not defeat their causes of action. Rather, they claim that the hearing report was not final, in that it was served on their attorney, not on them personally.

Code of Civil Procedure section 1094.6 (section 1094.6) governs judicial review of administrative decisions. Under subdivision (a), judicial review of an administrative decision "may be had . . . only if the petition for writ of mandate . . . is filed within the time limits specified in this section."

Subdivision (b) of section 1094.6 provides that the petition for writ of mandate "shall be filed not later than the 90th day following the date on which the decision becomes final. If there is no provision for reconsideration of the decision, or for a written decision or written findings supporting the decision, in any applicable provision of any statute, charter, or rule, for the purposes of this section, the decision is final on the date it is announced. If the decision is not announced at the close of the hearing, the date, time, and place of the announcement of the decision shall be announced at the hearing. . . . If there is a provision for a written decision or written findings, the decision is final for purposes of this section upon the date it is mailed by first-class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the party seeking the writ. . . ."

Subdivision (e) of section 1094.6 provides that "[a]s used in this section, decision means a decision subject to review pursuant to Section 1094.5, suspending, demoting, or dismissing an officer or employee, revoking, denying an application for a permit, license, or other entitlement, imposing a civil or administrative penalty, fine, charge, or cost, or denying an application for any retirement benefit or allowance."

Subdivision (f) of section 1094.6 provides: "In making a final decision as defined in subdivision (e), the local agency shall provide notice to the party that the time within which judicial review must be sought is governed by this section. [¶] As used in this subdivision, 'party' means an officer or employee who has been suspended, demoted or dismissed; a person whose permit, license, or other entitlement has been revoked or suspended, or whose application for a permit, license, or other entitlement has been denied; or a person whose application for a retirement benefit or allowance has been denied."

Penal Code section 597.1, subdivision (f), contains no provision for a written decision or findings. Corporal Torres did not announce his decision at the conclusion of the hearing; neither did he announce "the date, time, and place of the announcement of the decision" at the close of the hearing, as specified in section 1094.6, subdivision (b). Instead, a copy of the written decision was mailed to plaintiffs' counsel.

Assuming the failure to comply with the announcement requirements of section 1094.6, subdivision (b), tolled the time in which to file the petition for writ of mandate until it was received by plaintiffs' counsel (see *El Dorado Palm Springs, Ltd. v. Rent Review Com.* (1991) 230 Cal.App.3d 335, 346; *Garcia v. Los Banos Unified School Dist.* (E.D.Cal. 2006) 418 F.Supp.2d 1194, 1211), the 90 days within which to file a petition for writ of administrative mandate began to run when the decision was received. It has now expired and the administrative decision is final.

Subdivision (f) of section 1094.6, on which plaintiffs rely for the proposition that they must have been personally served, is inapplicable. As the County points out, that subdivision applies only to "an officer or employee who has been suspended, demoted or dismissed; a person whose permit, license, or other entitlement has been revoked or suspended, or whose application for a permit, license, or other entitlement has been denied; or a person whose application for a retirement benefit or allowance has been denied." Plaintiffs do not fall within any of these categories.

We also reject plaintiffs' claim that the administrative decision was not final because it was never "announced." "The statute does not define 'announced' or explain how a decision is 'announced.' But applying a '"plain and commonsense meaning"' to that term [citation], a decision necessarily is 'announced' when it is made known to the public. (See, e.g., American Heritage Dict. (2d college ed. 1985), p. 112 [defining 'announce': '1. To bring to public notice; declare or proclaim officially or formally'].)" (*Holden v. Los Angeles City Ethics Com.* (2006) 137 Cal.App.4th 1274, 1280.) When the County sent out notice of Corporal Torres's decision, it was announced for purposes of section 1094.6, subdivision (b).

Even if it was required that plaintiffs receive notice of the decision, they received such notice on September 4, 2008, when the County sent Moss a bill for the cost of seizure, impoundment, care and boarding fees for the seized horses, along with a copy of the postseizure hearing report. (*Liang v. San Francisco Residential Rent Stabilization & Arbitration Bd.* (2004) 124 Cal.App.4th 775, 777.) Plaintiffs did not file a petition for

writ of administrative mandate within 90 days of receiving this notice, and the administrative decision is now final.

Assuming arguendo that neither mailing of the decision to plaintiffs' counsel nor receipt of a copy of the decision was sufficient to trigger the 90-day period in which to file the writ petition, we conclude the decision is nevertheless final. A delay in filing a petition for writ of administrative mandate is subject to the defense of laches. "'The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay.'" (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 68.)

Plaintiffs knew at the time the County filed its demurrer, on February 20, 2009, that the County was relying on the finality of its administrative decision. The County reiterated its position in its November 23, 2009 appellate brief. On December 9, 2009, we took judicial notice of the September 4, 2008 letter and copy of the postseizure hearing report, which plaintiffs acknowledged receipt of in their December 17, 2009 reply brief. It has been over 90 days since they filed their reply brief, and no petition for writ of administrative mandate has been filed.

The failure of an administrative agency to comply with the requirements of section 1094.6 does not "give an aggrieved party an 'open-ended' period of time within which to seek judicial review of the administrative decision in question. Notwithstanding the tolling of the 90-day statute of limitations in such a case, the doctrine of laches would still apply to the timeliness of a party's effort to secure judicial review. It is clear that mandamus is a type of action in which equitable principles, such as the doctrine of laches, apply. [Citations.] It is equally clear that laches may apply independently in a mandate proceeding, notwithstanding the existence of an applicable statute of limitations. [Citation.]" (*El Dorado Palm Springs, Ltd. v. Rent Review Com.*, *supra*, 230 Cal.App.3d at pp. 346-347, fns. omitted; *Garcia v. Los Banos Unified School Dist.*, *supra*, 418 F.Supp.2d at p. 1211).

Plaintiffs' failure to file a petition for writ of mandate and continued insistence that the administrative decision is not yet final, despite having indisputably received

notice of that decision, flies in the face of common sense. Their delay in filing a petition and the prejudice which unquestionably would result were they to be permitted to file such a petition at this juncture in the proceedings call for the application of the doctrine of laches to bar any challenge to the administrative decision. (See *Johnson v. City of Loma Linda*, *supra*, 24 Cal.4th at pp. 68-69.) That decision is now final.

C. *Sustaining of the Demurrer*

As previously stated, plaintiffs do not contend that the finding of the hearing officer that the horses were properly seized does not defeat their causes of action. A decision of an administrative agency which becomes final after an aggrieved party fails to challenge it is entitled to collateral estoppel effect. (*Miller v. City of Los Angeles* (2008) 169 Cal.App.4th 1373, 1382.) Based on the finding that the horses were properly seized, which plaintiffs are collaterally estopped to challenge, the trial court properly sustained the County's demurrer without leave to amend and dismissed the action. (*Id*. at pp. 1382-1383.)[3]

---

[3] Inasmuch as the trial court's ruling was correct on this basis, we need not address plaintiffs' contention regarding the trial court's additional basis for its ruling, that the County was entitled to immunity for its actions.

DISPOSITION

The order is affirmed. The County is entitled to costs on appeal.

JACKSON, J.

We concur:

WOODS, Acting P. J.

SEGAL, J.*

---

* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.